

ARTICLE APPEARED
ON PAGE 19

NEW YORK TIMES
3 MARCH 1982

Bill to Protect Agents' Names Nears Vote in Senate

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Special to The New York Times

WASHINGTON, March 2—The Senate is moving toward almost certain passage of a bill that would make it a crime to expose the identities of intelligence agents working under cover abroad, but lawmakers appear to be closely divided over a proposed amendment that would make it easier to convict people under the legislation.

The bill would for the first time explicitly make it a crime for reporters and private citizens to publish information gleaned from public sources, such as diplomatic lists, or using lawful investigative techniques, even if the same information had previously been published.

In the floor debate, which began last Thursday, no Senator has opposed the concept outlawing the publication of agents' names, despite arguments by prominent constitutional scholars and some former prosecutors that this would infringe upon the First Amendment right to report illegal or improper conduct by Government agencies.

The debate has centered on the proposed amendment, which would extend the ban to include anyone who exposes covert agents "with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States" even if that was not the person's intent.

Votes Expected Next Week

Final votes on the bill and the amendment, sponsored by Senator John H. Chafee, Republican of Rhode Island, are expected by next week.

The Chafee amendment, which is strongly supported by President Reagan and the Central Intelligence Agency, would make the Senate bill identical to one passed by the House by a 354-to-58 vote in September.

The bill presents a classic conflict between the national security and civil liberties.

It is aimed primarily at such former central intelligence agents as Philip Agee and such writers as Louis Wolf, editor of the Covert Action Information Bulletin, who have systematically published lists of undercover agents' names with the avowed purpose of impeding foreign intelligence operations. Many senators said in the floor debate that this had endangered the agents' lives and the national security.

But the bill is worded so broadly that even some sup

porters and others who seek to expose crimes or abuses by intelligence agents or informers, including former agents.

Measure Contains Penalties

Under the bill, anyone found in violation of the law could be imprisoned for up to three years and fined up to \$15,000 for each violation.

While the version of the bill preferred by press advocates and civil liberties groups would punish anyone who publishes agents' identities only if they did so with "intent to impair or impede" intelligence activities, the Chafee amendment would extend the law to anyone who did so with "reason to believe" such impairment might result.

A reporter prosecuted under the "reason to believe" standard might be convicted on the basis of evidence that Government officials had told him that publication of the names of agents would impair intelligence activities, even if his intention was to expose illegal conduct.

Asked in an interview about this possibility, Senator Chafee said: "I'm not sure that The New York Times or The Washington Post has the right to expose names of agents any more than Mr. Wolf or Mr. Agee. They'll just have to be careful about exposing names of agents."

"To permit people in the guise of freedom of speech to engage in the business of exposing their names is just insanity," Mr. Chafee said.

Senator Chafee has said the purpose of his amendment is to prevent "despicable" people like Mr. Agee and Mr. Wolf "who are in the business of naming names" of agents from escaping conviction by arguing that their intentions were noble.

The bill would also punish writers of articles exposing the identities of United States citizens who act as secret informers for intelligence agencies even if they are not employed as agents and the identities of foreigners who are or have been intelligence agents or informers.

Dozens of articles and broadcasts by major news organizations in the last year have exposed the names and activities of intelligence agents, former agents and informers operating overseas.

Illegal Activities a Concern

Former agents who would be protected by the measure include Edwin P. Wilson and Frank E. Terpil, who, according to reports in The New York Times, other newspapers and by the

rorists in Libya and engaged in other illegal activities for profit while continuing to provide information to the agency.

Senators Joseph R. Biden Jr., Democrat of Delaware, Bill Bradley, Democrat of New Jersey, and others who have opposed the Chafee amendment have cited many of these articles in floor debate and warned that the amendment might make such reporting a crime.

They favor a version of the bill that prevailed over the House-passed "reason to believe" language by a 9-to-3 vote in the Senate Judiciary committee last October. That version would require proof of "intent to impair or impede" intelligence operations to convict anyone who disclosed agents' identities.

Many scholars say that both versions of the bill are unconstitutional violations of freedom of speech and of the press, although the Justice Department has approved both versions.

"Both bills would permit prosecution of journalists and others who identify a C.I.A. agent who has, in violation of American law, engaged in criminal conduct within the United States," Floyd Abrams, a New York lawyer who has represented news organizations before the Supreme Court in major constitutional cases said today.

"This bill threatens core First Amendment rights of American citizens more directly than any seriously considered by Congress since the end of World War II," Mr. Abrams said.

More than 100 scholars signed a letter in the fall of 1980 denouncing the Chafee version of the bill as unconstitutional. Prof. Philip Kurland of the University of Chicago, a prominent constitutional expert with a reputation for conservatism, has called the proposal "the clearest violation of the First Amendment attempted by Congress in this era."

But press groups, including the Society of Professional Journalists and the American Newspaper Publishers' Association, and the American Civil Liberties Union are concentrating their energies on pushing for the "intent" language, rather than on what they say would be a doomed effort to limit coverage of the bill to former officials.

"Because there is a steamroller to pass a bill, we are asking the Senators to pass the least damaging bill," Jerry Berman, legislative counsel for the American Civil Liberties Union, said today. But he added that "we are prepared to challenge this bill."